



# ITG News

Keeping First Nations Informed



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## Message From The Director

As many of you are aware, we have been working on the development of an IRS/Tribal Consultation Policy for the past 18 months. We have followed a structured process that was suggested by the Advisory Committee to the Tax Exempt Government Entities Commissioner. That process included a series of 12 listening meetings and a comment period on the discussions that took place at those meetings.

I am pleased to announce that we have taken another step forward in the evolution of the policy, through the formation of a volunteer drafting group that included twelve tribal representatives. This group met in July and completed an outline of a draft policy that was heavily reliant on the feedback from the previous listening meetings. The outline was posted to our web site at [www.irs.gov/tribes](http://www.irs.gov/tribes), along with a listing of the drafting committee members. Feedback was solicited, which could be provided to any member.

The drafting group will be meeting in late October to finalize the language in the draft policy. We hope to have the TEGE Commissioner meet with the group at that time, after which the policy will be subjected to a formal review.

While we have been very deliberate in the creation of the IRS/Tribal Consultation Policy, it is our hope that the steps we have taken will lead to a policy that works well for everyone, and enables maximum dialogue to occur wherever possible. If you have any questions or suggestions, please feel free to contact any of the members of the drafting group. Their names and contact information are listed on page 2 of this newsletter.

*Christie Jacobs*



### IN THIS ISSUE

Message from the Director	1
Consultation Policy Drafting Group Members	2
Magnetic Media Specifications Outlined by FinCEN	3
Abusive Schemes Update	3
Backup Withholding "B" Notices	4/5
Bank Secrecy Act	6
Tax Calendar	7/8







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## **Magnetic Media Specifications for Title 31 Reports Are Updated**

The Financial Crimes Enforcement Network has updated the Magnetic Media Filing specifications for the various forms required under Title 31. This includes FinCEN Forms 102 and 103, which are the common forms filed by tribal casinos.

The requirements for magnetic media filing of the Currency Transaction Report by Casinos (FinCEN Form 103) are contained in a 46 page document that can be accessed at [http://www.fincen.gov/magmed\\_ctr.pdf](http://www.fincen.gov/magmed_ctr.pdf). The specifications for Suspicious Activity Reports (SARCs) are reflected in a 29 page document that can be accessed at [http://www.fincen.gov/magmed\\_sarc.pdf](http://www.fincen.gov/magmed_sarc.pdf).

The specification changes are effective February 1, 2005.

## **Abusive Schemes Continues to be an Area of Focus**

The office of Indian Tribal Governments continues to focus on combating abusive schemes that are surfacing in Indian country. Our intent is to take actions that will protect tribal assets and minimize financial risk to the tribes and tribal members. Many schemes occur without the direct knowledge of the tribe, and/or without an understanding of the consequences by the tribe. They are a major concern for both the Service and Tribal governments who are struggling to protect their sovereignty and fledging enterprises, and maintain the support of Congress and the general public. These concerns are magnified by increasing attempts by promoters to use the tax and legal status of tribes to shelter transactions from taxation and oversight.

Risks can arise when a promoter gains a foothold within a tribal enterprise and convinces a tribe to implement programs that often sound "too good to be true". Recent examples we have uncovered include improper deferrals of per capita distributions to members, improper practices involving employee leasing entities, and embezzlement of tribal funds.

We are actively seeking to partner with tribes to address these issues. Our web site was recently updated to include a special section on abusive schemes, along with a link for reporting them via e-mail or in writing. We have also included brief descriptions of the specific areas currently under review, and we will be expanding that section in the near future.

We appreciate the assistance of several tribes and tribal organizations that have been supporting this effort, and we welcome others to join with us to ensure that we can jointly address these problems as quickly as possible. Specific questions or concerns relating to abusive schemes can be directed to Ken Voght at (716) 686-4860, or via e-mail at [tege.itg.schemes@irs.gov](mailto:tege.itg.schemes@irs.gov).







## Backup Withholding “B” Notices

The Information Reporting Program Customer Service Section at the IRS Martinsburg Computing Center (MCC) has contact representatives who answer tax law questions concerning information returns, including questions about the backup withholding (BWH) and incorrect information penalty programs. The following is a selection of the most commonly asked questions concerning backup withholding “B” notices.

### Q. What is the backup withholding program?

A. Internal Revenue Code (IRC) Section 6109(a)(1) requires a payer to include a correct Taxpayer Identification Number (TIN) on certain Forms 1099 with income subject to backup withholding (BWH). These forms include 1099-B, 1099-DIV, 1099-INT, 1099-MISC, 1099-OID, and 1099-PATR. IRC Section 6109(a)(2) requires a payee to furnish their correct TIN to the payer. IRC Section 6109(a)(3) requires a payer to request the correct TIN and include it on information returns submitted to IRS. Payers who file information returns with missing or incorrect TINs are subject to penalties for failure to file correct information to IRS. The BWH program provides information to payers about the missing and incorrect TINs they submitted to IRS.

### Q. What is a backup withholding CP2100/CP2100A “B” Notice?

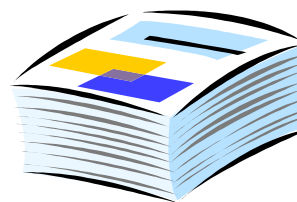
A. CP2100/CP2100A “B” Notice “Backup withholding explained” is used for the purpose of soliciting correct name/TIN combinations. There are actually two “B” notices—the First “B” Notice and the Second “B” Notice. The text of the Second “B” Notice is different from that of the First “B” Notice. It instructs the payee to contact IRS or the Social Security Administration (SSA) to obtain the correct name/TIN combination as shown in their records.

### Q. What should I do if I receive a CP2100 or CP2100A notice from the IRS?

A. First, compare the listing(s) with your records. For missing TINs: If you have not already started backup withholding, begin doing so immediately and continue until you receive the TIN. You must make three solicitations for the TIN (initial, first annual, second annual), to avoid a penalty for failing to include a TIN on the information return. For incorrect TINs: Compare the accounts on the listing with your business records. If they *agree*, send the appropriate “B” Notice to the payee. If an account *does not agree*, this could be the result of a recent update or an IRS processing error. If this type of error occurred, you need to correct or update your records. You must send the First “B” Notice and a Form W-9, *Request for Taxpayer Identification Number and Certification*, to a payee after you receive the first CP2100 or CP2100A, *Notice from IRS* with respect to their account for the purpose of soliciting a correct Name/TIN combination. You must send the second “B” Notice to a payee after you receive a second CP2100 or CP2100A, *Notice from IRS* within a 3 calendar year period. The mailing of the second notice should not include a Form W-9. The payee must certify the name/TIN combination after receiving the second “B” Notice. Generally, you do not have to send a “B” Notice more than two times within three calendar years for the same account. Remember: you do not have to call or write to the IRS to say that you made the correction or update to your records.

### Q. What should I do if this is the first notification and the Form W-9 is returned with the same incorrect information?

A. Keep the Form W-9 on file to show that the payee certified the Name/TIN combination. Do not backup withhold.







## Backup Withholding “B” Notices (Continued)

### **Q. How is a Name/TIN mismatch identified?**

A. A name/TIN combination is incorrect if it doesn't match or can't be found in IRS or SSA files. A name/TIN mismatch happens when an individual's name is submitted with a TIN that is not associated with the name provided. Please note your TIN is not interchangeable with different names. An Employer Identification Number (EIN) must be used for a partnership, corporation, or non-disregarded Limited Liability Company (LLC). A Social Security Number (SSN) must be used with an individual's name. Also, you must always provide the individual's name for a sole proprietorship, even if the sole proprietor uses a “doing business as” (DBA) name.

### **Q. What should I do if a TIN was actually on file but it was left off the Form 1099 or reported incorrectly?**

A. Make any required change to your records and use the correct information on future filings. Do not send a “B” Notice to the payee. See General Instructions for Forms 1099, 1098, 5498, W-2G for how to correct an information return.

### **Q. If I don't do business anymore with a payee, what should I do with the “B” Notice?**

A. Send it to try to get the correct TIN and keep a record of the notice. If you don't receive the TIN, you will have to backup withhold if you do business again with the payee. You must also track the notices for the “two in three year rule.” The IRS requires that you track these accounts for three years after the date of the first CP2100A or CP2100 Notice.

### **Q. Can a sole proprietor have an SSN or do they need an EIN?**

A. A sole proprietor may have an SSN or an EIN. However, they must always furnish their individual name on the first name line regardless of whether they use an SSN or EIN. A sole proprietor may also provide a business name or “doing business as” (DBA) on the second name line, but they must list their individual name first on the account with you. Publication 1281, *Backup Withholding on Missing and Incorrect Name/TINs* contains additional valuable information on this subject. You can obtain this publication from the IRS Web site at <http://www.irs.gov>.

## Tips for Obtaining “Good” TINs.

Always obtain the contractor's TIN before paying for services. Avoid abbreviating company names. If possible, refer to and use the same name as it appeared on the original application for an EIN (Form SS-4) or social security card. If you know a company has changed its name, ask if they have informed IRS of the change. IRS and SSA must be informed of any name changes. When filing Form 1099-MISC for a sole proprietor, always put the individual's name first, followed by the business name. For example, Joe's Garage should be reported as Joseph Johnson, DBA (doing business as) Joe's Garage. It does not matter whether you are using an EIN or SSN, the individual's name *must* appear first. The best tool to help you gather good information on contractors and vendors is Form W-9 (or a substantially similar version). It is a good resource for obtaining correct payee names/TINs and certifying exempt status for reporting purposes. In addition, the form specifically addresses the issue of sole proprietors. When properly completed, you will know if a contractor is a sole proprietor and therefore you will know to use the individual name first.

If you have any questions about backup withholding, information reporting, Forms 1099, or the CP2100 or CP2100A Notice(s) and listing(s), you may call your local ITG specialist or Martinsburg Computing Center (MCC) Information Reporting Program Customer Service Section Telephone: 866-455-7438 (toll free) or 304-263-8700 (not toll free) Hours: 8:30 a.m. to 4:30 p.m. Monday through Friday, ET E-Mail: [mccirp@irs.gov](mailto:mccirp@irs.gov)







## **Tribal Gaming Establishments and the Bank Secrecy Act (Title 31) Compliance Examination**

As you may know, Tribal casinos with gross gaming revenue over \$1,000,000 are subject to the reporting requirements of the Bank Secrecy Act, also known as Title 31. This entails reporting cash transactions of more than \$10,000 either as cash in or cash out. It also includes suspicious activity reporting.

Should your Tribe be selected for a Title 31 compliance examination, your ITG Specialist will contact you to schedule an initial meeting with the Specialist and the IRS Title 31 Compliance Officer as a start to the examination of a gaming establishment. At this appointment, the IRS Compliance Officer will interview key management personnel, as well as the Title 31 Compliance Officer, and other employees involved with the Title 31 program. The Compliance Officer will also request a tour of the casino.



The ITG Specialist attends this initial meeting in order to provide an overview of the examination process, and address any questions or concerns the Tribe may have. Tribal protocol issues are also addressed at this time. In addition, the Specialist will be present during the closing conference, upon completion of the examination.

After the initial interview, the Tribe will be requested to provide certain documents for the Title 31 Compliance Officer's review. Some of these documents may include:

- Any Forms 103 (CTRC's) filed with the IRS Detroit Data Computer Center.
- Any Forms 102 (SAR's) you may have filed.
- Any Forms W-2G filed with the IRS.
- Multiple Transaction Logs (MTL's) prepared by the casino.
- Your Title 31 Program Manual.
- Your Title 31 Employee Training Manual.
- Records of the employees that have been trained.
- Any other records kept for Title 31 purposes.

This list is not all inclusive. Additional items may be requested as determined by the Compliance Officer.

If you have any questions concerning this type of examination, or would like to have a Title 31 presentation provided to Tribal management, staff or employees, please contact your ITG Specialist.





## Federal Tax Calendar for Fourth Quarter 2004

### October 2004

SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4	5	6 * Make a deposit for 9/29-10/1	7	8 * Make a deposit for 10/2-10/5	9
10	11	12 Employees report September tip income to employers if greater than \$20	13	14 * Make a deposit for 10/6-10/8	15 * Make a deposit for 10/9-10/12 ** Make a deposit for September if under the monthly deposit rule	16
17	18	19	20 * Make a deposit for 10/13-10/15	21	22 * Make a deposit for 10/16-10/19	23
24	25	26	27 * Make a deposit for 10/20-10/22	28	29 * Make a deposit for 10/23-10/26	30
31						

### November 2004

SUN	MON	TUE	WED	THU	FRI	SAT
	1 Deposit Federal Un- employment Tax through September if greater than \$100	2	3 * Make a deposit for 10/27-10/29	4	5 * Make a deposit for 10/30-11/2	6
7	8	9	10 *Make a deposit for 11/3-11/5  Employees report October tip income to employers if greater than \$20	11	12	13
14	15 * Make a deposit for 11/6-11/9 ** Make a deposit for October if under the monthly deposit rule	16	17 * Make a deposit for 11/10-11/12	18	19 * Make a deposit for 11/13-11/16	20
21	22	23	24 * Make a deposit for 11/17-11/19	25	26	27
28	29 * Make a deposit for 11/20-11/23	30				

\* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

\*\* = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.





## Federal Tax Calendar for Fourth Quarter 2004

### December 2004

SUN	MON	TUE	WED	THU	FRI	SAT
			1 * Make a deposit for 11/24-11/26	2	3 * Make a deposit for 11/27-11/30	4
5	6	7	8 * Make a deposit for 12/1-12/3	9	10 * Make a deposit for 12/4-12/7  Employees report November tip income to employers if greater than \$20	11
12	13	14	15 * Make a deposit for 12/8-12/10 ** Make a deposit for November if under the monthly deposit rule	16	17 * Make a deposit for 12/11-12/14	18
19	20	21	22 * Make a deposit for 12/15-12/17	23	24	25
26	27 * Make a deposit for 12/18-12/21	28	29 * Make a deposit for 12/22-12/24	30	31	

\*= Make a Payroll Deposit if you are under the semi-weekly deposit rule.

\*\*= Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

### Return Filing Dates

#### November 1st

File Form 941 for the third quarter of 2004 (if tax is deposited in full and on time, file by November 10th)  
File Form 730 and pay the tax on applicable wages accepted during September

#### November 30th

File Form 730 and pay the tax on applicable wages accepted during October

#### January 3rd, 2005

File Form 730 and pay the tax on applicable wages accepted during November

